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Ms. April Michele Hoh  
Group Coordinator  
Barton and Onion Creek Stakeholder Group  
Texas Commission on Environmental Quality  
MC 150  
P.O. Box 13087  
Austin, Texas 78711-2087

October 14, 2009

Regarding: Comments on the staff Draft Ch. 311 amendments (Barton and Onion Creek discharges)

Dear Ms. Hoh:

These comments are offered on behalf of Hays County, Texas.

Several Hays County representatives participated in the first stakeholder meeting, and County officials and staff have followed the process carefully throughout. The County understands the TCEQ staff has to balance multiple influences in developing its recommendations to the Commissioners. Nonetheless, the County, overall, is disappointed that the recommendation will not reflect the near-unanimous position of the stakeholders – that there should be no waste water point source discharges permitted in the Barton and Onion Creek watersheds. In the end, the recommendation is not one the County can support.

Hays County is bothered that the proposed recommendations, as they now stand, do not take advantage of the findings and extensive data developed in the course of the Belterra TPDES docket, No. 2007-1426-MWD. This failure will likely have real and adverse environmental consequences in the Hill Country, and this failure is a missed opportunity for the agency to lessen the governmental costs associated with TPDES permitting in the Hill Country.

The proposed recommendation to the agency's Commissioners basically adopts the revised proposed permit effluent limitations from the Belterra docket as the target limitations for all domestic waste water discharges in the Barton and Onion Creek

watersheds. The Commissioners, however, in the Belterra docket concluded that the revised draft permit effluent limitations, alone, had not been demonstrated to safeguard Bear Creek from greater than *de minimis* degradation or to safeguard water quality in Barton Springs pool. See, Conclusions of Law ## 5 and 6 of the Commissioners' March 16, 2009, order in that docket. Certainly, given the high quality of the effort the permit applicant made in that docket and given that Bear Creek (the creek immediately at issue in the Belterra docket) is an Onion Creek tributary, the Commissioners' conclusions are likely the ones they would reach for any proposed domestic waste water discharge to Barton or Onion Creek tributaries. So, it is disheartening to see the staff recommend to the Commissioners standards that the Commissioners have so recently found will not, alone, support a permit approval.

There were various additional permit terms the Commissioners found in the Belterra docket were necessary, if the permit could legally be issued. Important among those was a requirement for roughly 15 days storage for about 70% of the total effluent. This was necessary to promote the objective of no discharge, except under very wet conditions, when, it is hoped, the creek flow conditions will be sufficiently high to avoid more than *de minimis* degradation because of the discharge. In the absence of a storage requirement along these lines in the recommendation, the staff is laying before the Commissioners a proposal the Commissioners have in the recent past found inadequate for want of a storage requirement.

The Belterra docket also resulted in an extensive in-stream monitoring regimen. The staff recommendation presently does not include a requirement for any in-stream monitoring. The in-stream monitoring is an important component of the Belterra permit, because the monitoring is the audit mechanism to verify that the permit limitations, in fact, safeguard the creek from greater than *de minimis* degradation.

One hopes the Belterra in-stream monitoring, in addition to being a check on the strength of the Belterra permit terms, will provide very useful information for development of minimum effluent limits, as the staff is proposing, here. It would seem a better course of action for the staff, than the course of recommending a set of limitations the Commissioners in Belterra found to be, alone, inadequate, would be to recommend the Commissioners await a few years' data from the Belterra in-stream monitoring, before they set minimum effluent limitations.

Finally, to return to the local-government costs not avoided by the proposed staff recommendation: this recommendation will not build a sufficiently strong floor for water quality protections in the Hill Country to allow local governments to forego participation in TPDES permit fights. Hays County invested upwards of \$125,000 in outside counsel and consultants for examining and understanding and negotiating and, ultimately, litigating the proposed Belterra permit. Additionally, County staff and Commissioners

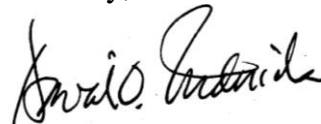
also put a lot of effort into that proposed permit. (And, of course, Hays County was not even the principal protestant in that docket.)

The County did this, because water quality, both surface and groundwater quality, is extremely important to the economy of the County and to quality of life of County residents. The Hays County government is not at liberty, even were it so inclined, to sit in the background and do nothing when discharge permits are proposed for approval within the County. Other Hill Country governments have similar burdens.

Strong minimum standards for Hill Country discharge permits could change that situation, e.g., could allow the County to be much less involved in waste water discharge permitting. This staff recommendation, however, does not set strong standards; it simply sets standards that are less weak than is the *status quo*. The practical effect of the staff recommendation, if ultimately adopted as a regulation, is likely to be that the cost to Hill Country governments of environmental vigilance will actually increase. Would-be dischargers will take the fact of rather weak minimum standards to be a Commission signal that discharges to Hill Country streams are not such "big deals," after all but, rather, are more pedestrian matters.

On balance, Hays County cannot support the staff recommendation. It does not set standards as stringent as the preponderance of the data indicates are necessary to avoid more than *de minimis* degradation of Hill County creeks. It invites would-be dischargers to believe the Commission considers effluent discharge to be roughly as acceptable as is land application or reuse of effluent; this will increase the financial burdens on Hill Country governments fighting to preserve the quality of their streams and aquifers. Finally, this recommendation is not supported by identified data or studies or the like, and it is just bad policy to sponsor a possible law for which a rational basis is not clear.

Sincerely,

A handwritten signature in black ink, appearing to read "David Frederick".

David Frederick, for  
Hays County, Texas

Xc:

Judge Sumter  
Mark Kennedy  
Bob Sewell  
Tom Weber  
Raymond Slade  
Karen Holligan

Bill Dugat  
John Dubnik  
Nancy McClintock  
Lauren Ross